

**GOVERNMENT OF PUDUCHERRY  
LABOUR DEPARTMENT**

(G.O. Rt. No. 99/AIL/Lab./J/2011, dated 10th May 2011)

**NOTIFICATION**

Whereas, the Award in I.D. No. 11/2006, dated 9-2-2011 of the Labour Court, Karaikal in respect of the industrial dispute between the management of M/s. Pondicherry Power Corporation Limited, Karaikal and PASIC, Pondicherry and its worker Tmt. K. Madharasi over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G. O. Ms. No.20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

**N. APPA RAO,**

Under Secretary to Government (Labour).

**BEFORE THE LABOUR COURT, KARAİKAL**

*Present* : Tmt. R. MARGARET ROSALINE, M.L.,  
Presiding Officer, District Judge.

*Wednesday, the 9th day of February 2011*

**I.D. No. 11/2006**

K. Madharasi,  
26, Madha Koil Street,  
Polagam, T.R. Pattinam,  
Karaikal.

.. Petitioner

*Versus*

1. The Executive Engineer ( Mech),  
Pondicherry Power Corporation  
Limited, T.R. Pattinam, Karaikal.
2. The Managing Director,  
Pondicherry Agri Service and  
Industries Corporation Limited,  
Thattanchavady, Pondicherry. .. Respondent

This petition coming on 4-1-2011 for final hearing before me in the presence of Thiru A. Ahmed Ansari, advocate for the petitioner, Thiru R. Vetriselvan, advocate for the 1st respondent, and Thiru B. Mohandoss, advocate for the 2nd respondent, upon hearing both sides and perusing the case records and having stood over for consideration till this day, this court passed the following :

**AWARD**

This is a reference under the Industrial Disputes Act, 1947 regarding the dispute within the management of M/s. Pondicherry Power Corporation Limited, Karaikal and PASIC, Pondicherry and its worker Tmt. K. Madharasi, over her non-employment in G.O. Rt. No.86/2006/Lab./AIL/J, dated 5-6-2006.

The following issues are found in the Annexure:

1. Whether the non-employment of Tmt. K. Madharasi by the management of M/s. Pondicherry Agro Services and Industries Corporation Limited (PASIC), Pondicherry is justified or not?
2. To what relief, she is entitled to?
3. To compute the relief, if any, awarded in terms of money, if it can be so computed?
2. The petitioner has filed this claim statement with the following averments:

The petitioner was recruited as a gardener in order to set up a green belt installation in M/s. Pondicherry Power Corporation Limited, during 1999 by PASIC, Pondicherry. She was appointed by the 2nd respondent to work with the 1st respondent. On being appointed so, she was paid ₹ 45 per day. The petitioner is a student in Diploma of Teacher Training and was pursuing computer education. The petitioner was in the pay roll of the second respondent. She was also selected among the seven other female workers as gardener. The petitioner and her colleagues often faced sexual harassment by the Environmental Engineer one Saravanan. She was also given oral instructions to perform her duties in the staff quarters. With the help of the intervention of the local politicians, the workers enable themselves to live and work with dignity. The petitioner was continuously in service of the second respondent till 2003. During June 2000 the petitioner was permitted to have a substitute for her as she had to attend computer classes. Except half a day leave on Sunday, she worked as a gardener on all the days in a week. When she went to attend personal contact programme in Annamalai University for 46 days in the month of July 2004 she was permitted to have a badli worker. She was paid salary on consolidated monthly basis with Deepavali bonus of ₹ 1,300 every year. When the petitioner came after a short leave in the month of August 2003, the supervisor one Jayaraj used filthy language against her and prevented her from doing work. The petitioner signed in the pay register and acquaintances on the direction of the said Saravanan and Jayaraj. The Security Chief one

Anand prevented her from going to work, though she signed in the gate register maintained by the first respondent. The petitioner is physically handicapped and the non-employment is not justified. The petitioner is put to physical and mental torture as she had not indulged in any activities which will warrant her illegal termination of service. Hence, she was compelled to approach the Labour Officer. The contract between the first and the second respondent is still in force. Hence, she prayed for the order to reinstate her into the service of the respondent with full back wages, monetary benefits, costs and compensation.

3. The 1st respondent filed its counter statement with the following averments:

At the outset this respondent denied that the petitioner was directly recruited as gardener by the second respondent during 1999 for setting a green belt installation in the premises of this respondent. The 2nd respondent was given work order for maintenance of the green belt for the period from January 2003 to December 2003. The 2nd respondent was engaged by this respondent and it is admitted that the petitioner was an employee of the 2nd respondent for the contract period of one year. As per the work order issued by this respondent, the 2nd respondent was entitled to engage 8 labourers and under that clause, the petitioner was engaged by the 2nd respondent. The petitioner is not the employee of this respondent and her name is not in the roll of this respondent. The claim petition is silent from whom the petitioner got her salary at the rate of ₹ 45 per day. The petitioner herself has admitted that she is in the pay roll of the 2nd respondent. This respondent denies the allegation against the Environmental Engineer one Saravanan regarding the sexual harassment and the instruction to perform her duties in the staff quarters. Being the student of Teacher Training Education, it is not necessary for the petitioner to urge for this employment. No one has any right to enter into the premises of this respondent except on permission by the 2nd respondent administration. This respondent is not aware of the fact that the petitioner was permitted to have a substitute and the terms of the conditions between the petitioner and the second respondent. The petitioner receipt of consolidated monthly salary and bonus are all the matters between the petitioner and the 2nd respondent. This respondent denied the allegation about the usage of filthy language by the supervisor Jayaraj and the prevention of the petitioner from entering into the premises by the Security Chief Anand under the instructions of the said Supervisor Jayaraj and Saravanan. The petitioner had never signed in the

pay roll and acquaintance of this respondent. The petitioner might have signed in the gate entry register maintained by this respondent during her course of employment under the 2nd respondent in maintaining the green belt in its premises. The petitioner being employed under the 2nd respondent had to necessarily sign in the register. The petitioner was not orally directed not to come to work by this respondent. This respondent is not the necessary party to this case and the petitioner ought to have re-employment against the 2nd respondent alone. The allegation of maintenance of contract of green belt is still in force. The contract was ended in December 2003. From January 2004, the contract was not with the 2nd respondent. This respondent had not terminated the service of the petitioner, as she is not the employee of this respondent. The conciliation report submitted by the Labour Officer reveals that the petitioner was engaged casually by the 2nd respondent as and when required for attending the maintenance work. From the report it is evident that the actual industrial dispute is between the petitioner and the 2nd respondent. Hence, it prayed for the dismissal of the dispute with costs.

4. The second respondent filed its counter with the following averments:

It is admitted that this respondent recruited female workers as gardeners for setting up a green belt installation in the first respondent premises. The petitioner has to prove that she was recruited during the year 1999 and she was in continuous service of this respondent until she was terminated orally in the month of August 2003. The petitioner has made distorted version of facts suppressing the material facts. It is true that work order was given by the first respondent for the period of one year beginning from January 2003 to December 2003. The petitioner as well as seven other workers were engaged for the above contract for a period of one year alone for the purpose of fulfilling the work order. The petitioner was appointed purely as casual work woman on day-to-day basis depending upon the requirements under the green belt scheme. The petitioner was never in continuous employment for 240 days. The petitioner was engaged as daily rated worker and the workmen were not paid on the days of non-employment. The petitioner was engaged intermittently and there was no formal appointment order issued to the petitioner. The petitioner was engaged on voucher payments to meet special contingencies. As the period of one year stipulated above was over, the first respondent has stopped the contract. There was no necessity for this respondent to utilise the service of the petitioner and other

gardeners. The contract was for a fixed period and the non-renewal of the contract is not retrenchment as per the provisions of the Industrial Disputes Act, 1947. The respondent has no knowledge about the allegations made by the petitioner against the officials of the first respondent. The allegations about the employment of badli and the permission to have substitute when she went to attend the personal contact programme in Annamalai University for 46 days are all denied. If the petitioner considered herself to be a regular employee, she should have applied leave on these occasions. Hence, the petitioner cannot make a claim for reinstatement with back wages with all attendant benefits like a regular employee.

5. This respondent has entered into a contract with the first respondent for maintenance of the garden for a period starting from 3-3-1999 and ending with February 2004. The garden maintenance was done by this respondent directly from 3-3-1999 to 9-1-2002. Subsequently when the petitioner was engaged she was serving only on contractual basis for the period from 3-3-1999 to 1-2-2000. Subsequently from 3-2-2000 to 11-4-2001 the petitioner absented herself and did not report for duty. Then this respondent entrusted the garden maintenance work of the first respondent to a sub-contractor namely M/s. N.H. Nursery, Papanasam. The said sub-contractor engaged the petitioner for garden maintenance from 10-1-2002 to August 2003 on contractual basis with intermittent breaks. Even then she has not reported for duty to M/s. N.H. Nursery. Then the first respondent entrusted his garden maintenance work to M/s. Sharan Agro Tech. Services, Mudaliarpet, Pondicherry-4 from 1-11-2004 to 31-10-2005. The records maintained by this respondent as well as the first respondent and M/s. N.H. Nursery make it crystal clear that the petitioner was engaged by this respondent from 3-3-1999 to 1-2-2000 alone purely on contractual basis as a daily rated casual and she had no right to claim continuous employment. Subsequently, the petitioner along with other employees were engaged by the contractors appointed by the first respondent from time to time. In the absence of relationship of employer and employee between the respondent and the petitioner, there is no obligation on the part of this respondent to provide work or pay wages to the petitioner. There is no question of termination of employment of the petitioner by this respondent, as there is no relationship as that of employer and employee. Hence it prayed for the dismissal of the petition with costs.

*6. On these pleadings :*

The petitioner examined herself as P.W.1 and one another witness as P.W.2 and marked Exs.P1 to P4. On the side of the respondents, the first respondent

examined one witness as R.W.1 and the Managing Director of the second respondent examined himself as R.W.2 and one another witness as R.W.3. The respondent has chosen to mark Exs. R1 to R17 and Exs. XI and X2 have been marked through P.W.2.

*7. The points for consideration are:*

1. Whether the petitioner was under the employment of the first respondent or the second respondent?

2. Whether the petitioner has worked for 240 days as alleged by her in the petition?

3. Whether the non-employment of the petitioner is justified. If not, what relief the petitioner is entitled to?

*Points No. 1 and 2 :*

8. The perusal of the claim petition reveals that the petitioner has averred that she has been appointed as a gardener directly by the second respondent to work with the first respondent on a daily rated salary of ₹45 per day. Therefore as per her own petition and the evidence before this court that, the petitioner has claimed to be a worker under the second respondent alone on daily rated basis. She would say that she has been appointed since 1999 till she was denied work *i.e.* on 25-8-2003. On the other hand the contention of the second respondent is that the petitioner was engaged on contractual basis for a period from 3-3-1999 to 1-2-2000 with intermittent breaks. The second respondent would further allege that subsequently from 3-2-2000 to 11-4-2001 the petitioner absented herself and did not report for duty and subsequently the garden maintaining work was entrusted to sub-contractor namely M/s. N. H. Nursery, Papanasam and the said sub-contractor alone has engaged the petitioner from 10-1-2002 to August 2003 on contractual basis with intermittent breaks. It would also allege that the petitioner has not worked continuously for a period of 240 days in a year. Therefore, it is the bounden duty of the petitioner to prove that she has worked for 240 days in a year prior to her illegal retrenchment under the second respondent so as to claim the benefits. In order to substantiate her claim the petitioner has marked Exs.P1 to P4. The perusal of Ex.P1, a letter written, to the Hon'ble Chief Minister, Pondicherry, reveals that she had worked for three years initially under the second respondent and then she worked under a sub-contractor namely Thiru Mohamed Sali for two years. In Ex.P1, the petitioner has admitted that she used to receive wages only from the said Mohamed Sali and on the instructions of one Saravanan, the Environmental Engineer and one Jayaraj, Supervisor of the garden maintenance she was refused work from 25-8-2003. Therefore, the petitioner is not in a position to say that when she was denied work

on 25-8-2003 she was working under the second respondent. Her own admission in Ex.P1 reveals that one Mohamed Sali was a sub-contractor under the second respondent and she was working only under him. Even Ex.P1 reveals that she has availed four days leave from 21-8-2003 to 24-8-2003 after giving leave letter. However, there is no reference in Ex.P1 to show that she gave leave letter to her employer namely Thiru Mohamed Sali who is the sub-contractor of the second respondent. If Mohamed Sali is a sub-contractor under whom the petitioner has worked, she ought to have availed leave with the permission of the said Mohamed Sali and not either from the Environmental Engineer or the garden supervisor who were the employees of the first respondent. Even the failure report namely Ex.P2 reveals that the petitioner has demanded reinstatement only from the first respondent namely M/s. Pondicherry Power Corporation Limited, Karaikal which is totally a wrong representation made by the petitioner to the Labour Officer. The first respondent during the enquiry before the Labour Officer has categorically denied the relationship as that of employer and employee between itself and the petitioner herein. Subsequently the second respondent was asked to appear for the conciliation proceedings before the Labour Officer and in turn even the second respondent has categorically reported to the Labour Officer that the petitioner was not employed by it at the alleged time of retrenchment. As averred by the second respondent the petitioner has worked under one Mohamed Sali and the same is evident from Ex.R14. Ex.R12 to R14 are the letters sent by the said sub-contractor to the second respondent namely from Mohamed Sali who was running M/s. N.H. Nursery, Papanasam. Under Ex.R14 the petitioner has signed having received a salary from 1-1-2003 to 31-3-2003 from the said sub-contractor. Ex.R12 also reveals that the petitioner has reported to have received salary from 1-3-2000 to 31-3-2000 from the said Mohamed Sali who was running M/s. N.H. Nursery as a sub-contractor of the second respondent. As such the petitioner has failed to prove that she was illegally retrenched from her work since 25-8-2003 by the second respondent. The perusal of Ex.R1 reveals that the first respondent has given a work order to the second respondent for maintenance of garden green belt area in the first respondent project site for a period of one year from January 2003 to December 2003 alone. The petitioner has not produced any documents before this court to show that the second respondent continued to be in the service of the first respondent even after the expiry of the period referred in the work order namely Ex.R1. The first respondent has totally denied the fact that its contract with the second respondent is still continuing. The first respondent would aver that for the past four years from January 2004 the contract

of maintenance of green belt in the premises of the 2nd respondent was with some other contractor and not with the PASIC, Pondicherry. Therefore, it is evident that even if the second respondent was having contract with the first respondent, it is only up to the period January 2004. It is further evident that the contract between the first and the second respondent for maintenance of the green belt had ended in December 2003. Even if the petitioner was employed directly by the second respondent after the termination of the contract, the second respondent cannot be ordered to reinstate the petitioner at this stage. Hence, this court is of the opinion that the petitioner's prayer that she has to be reinstated into service is not be possible.

9. In view of the above discussions, point No.1 is answered to the effect that the petitioner was not employed by the first respondent at any point of time and after the termination of the contract by the first respondent from January 2004, the second respondent cannot be the employer of the petitioner.

In view of the above discussions, point No.2 is answered to the effect that the petitioner has not proved that she has worked under the second respondent for about 240 days before the date of her retrenchment. Hence this point is answered to the effect that the petitioner has not worked for 240 days as alleged by her in the petition.

*Point No. 3 :*

10. In view of the decisions of this court in points No.1 and 2, the petitioner has failed to prove that she has worked under the second respondent or the first respondent continuously for 240 days before her alleged date of retrenchment. Hence this point is decided that the petitioner is not entitled for any relief as prayed by her in the petition.

11. In the result, the industrial dispute is dismissed.

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in the open court on this the 9th day of February 2011.

**R. MARGARET ROSALINE,**  
Presiding Officer, Labour Court.  
Karaikal.

*Petitioner's witnesses :*

P.W.1 — K. Madharasi  
P.W.2 — S. Anthonisamy

*Respondent's witnesses :*

R.W.1 — Ramachandran Santhosh  
R.W.2 — Manthaiyan  
R.W.3 — Mohamed Sali

*Petitioner's exhibits :*

- Ex.P1 — Copy of the petition given by the petitioner to the Hon'ble Chief Minister, Pondicherry.
- Ex.P2 11-2-2004 Copy of the Letter by the Labour Officer to the Secretary to Government (Labour), Chief Secretariat, Pondicherry.
- Ex.P3 5-6-2006 Copy of the notification in G.O. Ms. No. 86/2006/Lab./AIL/J, dated 5-6-2006.
- Ex.P4 20-10-2003 Copy of the notice enquiry/conciliation by the Labour Officer (Conciliation), Karaikal.

*Respondent's exhibits :*

- Ex.R1 6-1-2003 Copy of letter by the Pondicherry Power Corporation, T.R. Pattinam, Karaikal to the General Manager, PASIC, Pondicherry.
- Ex.R2 11-2-2004 Copy of the Letter by the Labour Officer to the Secretary to Government (Labour), Chief Secretariat, Pondicherry.
- Ex.R3 18-8-1998 Copy of the letter by the Project Director, Pondicherry Power Corporation Limited to the General Manager, PASIC, Karaikal.
- Ex.R4 25-11-1998 Copy of the letter by the Managing Director, Pondicherry Power Corporation Limited to the Managing Director, PASIC, Pondicherry.
- Ex.R5 13-6-1998 Copy of the letter by the Project Director, Pondicherry Power Corporation Limited to the Manager, PASIC, Karaikal.
- Ex.R6 19-2-1999 Copy of the letter by the Project Director, Pondicherry Power Corporation Limited to the General Manager, PASIC, Karaikal.
- Ex.R7 11-11-1998 Copy of the letter by Banyan Nursery to Thiru Vasanthakumar, Agro House, Thattanchavady.
- Ex.R8 20-11-1998 Copy of letter by Dy. General Manager (INPUTS) Pondicherry Agro Service to the Managing Director, Pondicherry power Corporation Limited, Pondicherry.

- Ex.R9 28-12-1998 Copy of the letter by Banyan Nursery to Thiru Vasanthakumar, Agro House, Thattanchavady.
- Ex.R10 19-1-1999 Copy of the letter by Banyan Nursery to the Managing Director, PASIC, Pondicherry.
- Ex.R11 12-3-1999 Copy of the letter by Banyan Nursery to the Managing Director, PASIC, Pondicherry.
- Ex.R12 — Copy of acknowledgment of receipt of wages by the petitioner and 3 others.
- Ex.R13 — Copy of acknowledgment of receipt of wages by the petitioner and three others.
- Ex.R14 — Copy of letter by Mohamed Sali to the Managing Director, PASIC, Pondicherry.
- Ex.R15 3-9-2003 Copy of the letter by the petitioner to the Labour Officer.
- Ex.R16 18-10-2003 Copy of letter by the Executive Engineer, Pondicherry Power Corporation to the Labour Officer, Karaikal.
- Ex.R17 17-12-2003 Copy of letter by Managing Director, PASIC, Pondicherry to the Labour Officer, Karaikal.

*Court's exhibits :*

- Ex.XI 3-7-2009 Authorisation letter given by the Labour Officer to one S. Anthonisamy, Inspector of Labour, Labour Department.

**R. MARGARET ROSALINE,**  
Presiding Officer,  
Labour Court, Karaikal.

GOVERNMENT OF PUDUCHERRY  
**LABOUR DEPARTMENT**

(G. O. Rt. No. 100/AIL/Lab./J/2011, dated 10th May 2011)

**NOTIFICATION**

Whereas, the Award in I. D. No. 8/2008, dated 31-1-2011 of the Labour Court, Karaikal in respect of the industrial dispute between the management of M/s. Nallathur Co-operative Milk Society Limited, Nallathur and Thiru N. Subramanian over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G. O. Ms. No. 20/91/Lab./L., dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

**N. APPA RAO,**  
Under Secretary to Government (Labour).

### BEFORE THE LABOUR COURT, KARAİKAL

*Present :* Tmt. R. MARGARET ROSALINE, M.L.,  
Presiding Officer, Labour Court,  
(District Judge), Karaikal.

*Monday, the 31st day of January 2011*

**I. D. No. 8/2008**

Thiru N. Subramanian,  
No.3, Melatheru,  
Surakudy, Thirunallar,  
Karaikal

.. Petitioner

*Versus*

The Nallathur Co-operative  
Milk Society Limited,  
Nallathur P. O.,  
Nedungadu, Karaikal

.. Respondent

This case coming on 18-1-2011 in the presence of Thiru V. Govindasamy, advocate for the petitioner and the respondent being called absent and set *ex parte*, and on hearing the petitioner and on perusing the case records, this court passed the following:

### AWARD

This industrial dispute arises out of the reference made by the Government under section 10(1)(c) of the Industrial Disputes Act in G.O.Rt. No. 146/AIL/Lab./J/2008, dated 18-9-2008 in and by which the following references were made to this court for adjudication.

(a) Whether the dispute raised by Thiru N. Subramanian against the management of M/s. Nallathur Co-operative Milk Society Limited, Nallathur, Karaikal over non-employment is justified or not ?

(b) To what relief, Thiru N. Subramanian is entitled to ?

(c) To compute the relief, if any awarded in terms of money, if it can be so computed ?

2. Award passed. The petitioner has proved through the Ex.P2 that he has been appointed as Clerk with effect from 1-2-1997. As per Ex.P8 the petitioner was recommended for promotion to Grade-II Clerk by the respondent society. Hence the petitioner is an employee who is entitled for remedies under the Industrial Disputes Act. Under such circumstances the petitioner cannot be denied employment. Even the respondent society has not followed any principles or rules before denying employment.

In view of the above discussion, the dispute is decided to the effect that the non-employment of petitioner is not justified. Hence he is entitled for reinstatement. The respondent society is directed to reinstate the petitioner in the same cadre of employment forthwith with back wages and all attendant benefits as prayed by him.

Written and pronounced by me in the open court on this 31st day of January 2011.

**R. MARGARET ROSALINE,**  
Presiding Officer, Labour Court,  
Karaikal.

### *List of witnesses examined by the petitioner :*

P.W.1 — N. Subramanian

### *List of exhibits marked by the petitioner :*

- Ex.P1 — Office order, dated 30-6-1995 issued to the petitioner by the respondent society.
- Ex.P2 — Office order, dated 1-2-1997
- Ex.P3 — Office order, dated 1-9-1997
- Ex.P4 — Office order, dated 22-8-1998
- Ex.P5 — Proceeding of respondent society, dated 9-10-1998.
- Ex.P6 — Letter by the respondent society to Registrar of Co-operative Societies Pondicherry, dated 5-4-1999.
- Ex.P7 — Office order, dated 31-3-2004.
- Ex.P8 — Office order, dated 22-6-2004.
- Ex.P9 — Letter by the respondent society to Registrar of Co-operative Societies, Pondicherry, dated 4-5-2007.
- Ex.P10 — Letter by President to the petitioner to call for explanation, dated 11-8-2007.
- Ex.P11 — Explanation given by the petitioner, dated 17-8-2007.

**R. MARGARET ROSALINE,**  
Presiding Officer, Labour Court,  
Karaikal.

**GOVERNMENT OF PUDUCHERRY  
LABOUR DEPARTMENT**

(G.O. Rt. No. 101/AIL/Lab./J/2011, dated 10th May 2011)

**NOTIFICATION**

Whereas, the Award in I.D. No. 1/2005, dated 8-2-2011 of the Labour Court, Karaikal in respect of the industrial dispute between the management of M/s. Soundararaja Mills, Karaikal and its workman Thiru A. Roosevelt over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order )

**N. APPA RAO,**  
Under Secretary to Government (Labour).

**BEFORE THE LABOUR COURT, KARAİKAL**

*Present :* Tmt. R. MARGARET ROSALINE, M.L.,  
Presiding Officer, Labour Court,  
(District Judge), Karaikal.

*Tuesday, the 8th day of February 2011*

**I.D. No. 1/2005**

Thiru A.Roosevelt,  
No. 48, Anthoniar Koil Street,  
Kottapakkam, Nedungadu, Karaikal. . . Petitioner

*Versus*

The Employer,  
M/s. Soundararaja Mills Limited,  
Nedungadu, Karaikal. . . Respondent

This case coming on 16-11-2010 in the presence of Thiru V. Govindasamy, advocate for the petitioner, and Thiru R.Thimbiraj, advocate for the respondent, and on hearing both sides, and on perusing the case records, this court passed the following:

**AWARD**

This industrial dispute arises out of the reference made by the Government under section 10(1)(c) of the Industrial Disputes Act in G.O. Rt. No. 166/2004/Lab./AIL/J, dated 23-12-2004 in and by which the following references were made to this court for adjudication.

(a) Whether the non-employment of Thiru A. Roosevelt by the management of M/s. Soundararaja Mills, Karaikal is justified or not ?

(b) To what relief, he is entitled to ?

(c) To compute the relief, if any awarded in terms of money, if it can be so computed?

2. Petitioner present. Settlement arrived between parties under section 18(1) of Industrial Disputes Act as full and final settlement. Hence industrial dispute dismissed.

Written and pronounced by me in the open court on this the 8th day of February 2011.

**R. MARGARET ROSALINE,**  
Presiding Officer,  
Labour Court, Karaikal.

**GOVERNMENT OF PUDUCHERRY  
LABOUR DEPARTMENT**

(G.O. Rt. No. 102/AIL/Lab./J/2011, dated 10th May 2011)

**NOTIFICATION**

Whereas, the Award in I. D. No. 3/2006, dated 17-12-2010 of the Labour Court, Karaikal in respect of the industrial dispute between the management of M/s. Henkel Spic India Limited, Karaikal and its workman Thiru K. Sivakumar over non-employment has been received.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

**N. APPA RAO,**  
Under Secretary to Government (Labour).

**BEFORE THE LABOUR COURT, KARAİKAL**

*Present :* Tmt. R. MARGARET ROSALINE, M.L.,  
Presiding Officer,  
District Judge.

*Friday, the 17th day of December 2010*

**I. D. No. 3/2006**

Thiru K. Sivakumar . . . Petitioner

*Versus*

The Employer,  
M/s. Henkel Spic India Limited,  
Karaikal . . . Respondent

This petition coming on 19-11-2010 for final hearing before me in the presence of Thiruvalargal V.Govindasamy, A. Danasegarey and M. Uma Maheswari, advocates for the petitioner, and Thiru S.Selvaganapathy, advocate for the respondent, upon hearing both sides and perusing the case records and having stood over till this day for consideration, this court passed the following:

#### AWARD

This is a reference under the Industrial Disputes Act, 1947 regarding the dispute within the management of M/s.Henkel Spic India Limited, Karaikal and its workman K.Sivakumar over his non-employment in G.O. Rt. No. 65/2006/Lab./AIL/J, dated 3-4-2006.

The following issues are found in the Annexure:

(1) Whether the non-employment of Thiru K. Sivakumar by the management of Henkel Spic India Limited, Karaikal is justified or not?

(2) To what relief, he is entitled to?

(3) To compute the relief if any, awarded in terms of money, if it can be so computed?

2. The petitioner has filed this claim statement with the following averments:

The petitioner joined the respondent company on 28-8-1998 as an apprentice on a consolidated salary of ₹ 3,000 per month which expired on 7-8-2001. At the end of the period, he was given a service certificate on 7-8-2001. Thereafter the petitioner continued to work in the respondent management as they assured to make him as a permanent worker in case vacancy arises after consulting with the Managing Director. Therefore the petitioner continued to work under the respondent. All of a sudden on 28-10-2004 the respondent was denied work. Therefore the petitioner was constrained to approach the Labour Officer, Karaikal for redressal. The respondent management filed a counter stating that on completion of apprenticeship, the petitioner was asked to approach M/s. Eswaramurthy, contractor for job and the petitioner only worked under him. The respondent further stated that on 15-6-2004 the contract of Eswaramurthy came to an end and a new contractor M/s.Abirami Services Private Limited came on the scene and the petitioner was retained by the said new contractor. The respondent alleged that on 27-10-2004 the petitioner meddled with the main tank activities and therefore the Manager Y.Narayanan advised M/s. Abirami Services Private Limited to terminate his services and accordingly his services were discontinued.As the conciliation proceedings failed the Government of Puducherry referred the matter for adjudication. It is not correct to say that he worked

under the contractor M/s. Eswaramurthy and subsequently he served under the contractor M/s. Abirami Services Private Limited on 15-6-2004. If both the contractors had appointed they would have given him appointment order and paid his salary. This respondent management employed the petitioner and he was handling work in the ensyme system and he was designated as area technician. His work was supervised by the respondent management. The petitioner's services was arbitrarily terminated on 28-10-2004 after completion of three years. Therefore he has put in around 240 days of work during the period of 12 calendar months. The petitioner has been retrenched without implicating section 25-F of the Industrial Disputes Act, 1947. Hence his termination is illegal. The petitioner was working as against the permanent vacancy and no enquiry was conducted. Hence the petition for reinstatement with backwages, continuity of service and other consequential benefits with costs.

3. The respondent management filed its counter statement with the following averments :

This respondent is a registered company having its factory at Karaikal. This respondent have registered themselves as principal employer under the Contract Labour (Regulation and Abolition) Act and appointed independent contractors to take up works relating to plant and machineries and to handle miscellaneous operations such as loading and unloading, housekeeping, security, gardening and so on. The petitioner was engaged as an apprentice under the Apprentice Act, 1971 for the period from 28-8-1998 to 27-8-2001 and there was no agreement between the petitioner and the respondent to give any permanent employment. Therefore, on expiry of the apprenticeship training period he was relieved and a service certificate dated 7-9-2001 was issued. On the date of the said completion of apprenticeship training, the petitioner ceased to be even a trainee and he does not have any lien or right of employment with the respondent. On completion of apprenticeship if vacancy is available based on test and interview, the petitioner will be considered for regular appointment. The petitioner was taken as apprentice along with one Subbaiah and after their apprenticeship training they were issued certificates. Subsequently the petitioner was employed under the registered contractor namely B. Eswaramoorthy and that contract came to end on 15-6-2004. After that the petitioner joined under an another contractor by name M/s. Abirami Services Private Limited. However the said contractor discontinued the engagement of the petitioner for various reasons. This petitioner was not a worker of the respondent management and his services were



governed by the contractor by name M/s. Abirami Services Private Limited. Therefore the petitioner cannot claim employment with this respondent as a matter of right. If at all the petitioner is having any right of employment he should have preferred his claim only against the contractor. In the absence of employer-employee relationship with the respondent, the petition is not maintainable and the reference made by the Government is bad in law. The petitioner will have to say for the non joinder of proper and necessary parties that is M/s. Abirami Services Private Limited. Hence the petition is liable to be dismissed. Hence it prayed for dismissal of the industrial dispute.

4. On these pleadings, the petitioner examined himself as PW1 and marked Ex.P1 to Ex.P15. On the side of the management, company examined its Deputy Manager as RW1 and marked Ex.R1 to Ex.R3.

5. *Now the point for determination is -*

Whether the non-employment of the petitioner by the respondent management is justified or not? If not whether the petitioner is entitled for reinstatement with backwages and other benefits as claimed by him?

6. *On point :*

The contention of the respondent is that there is no relationship as that of the employee and employer between the petitioner and the management and the petitioner was employed only under one contractor by name M/s. Abirami Services Private Limited when he was terminated from the services. In order to support the said claim, the learned counsel for the respondent had submitted the citation in "*Bharat Cooking Coal Limited Vs. Rashtriya Collery Mazdoor Sangh - 2006 LLR 245 SC*", wherein the Hon'ble Apex Court has decided that when existence of the relationship of employer and employee is disputed, the same was required to be determined in presence of all the parties who are interested in the subject matter of reference and the burden is always on the petitioner to prove that he was employed under the principal employer when the management pleads that the worker was under the contractor.

7. There is no dispute about the petitioner being engaged as an apprentice for a period of three years and the contention of the petitioner is that he has been employed directly by the respondent management and he has never worked under any contractor of the respondent. The petitioner has marked Ex.P3 to show that even on 2-9-2001 he was given work order. He has also marked Ex. P 10 to show that he was asked to work as Area Technician on 9-9-2003. Ex.P.11 reveals that he was asked to work as Area Technician during the month of July 2003. Ex. P12 reveals that on 26-2-2004 he worked

as Area Technician. Ex.P13 reveals that he has worked as Area Technician on 9-8-2004. He has also marked Ex.P14 to show that he had worked as a Area Technician on 16-8-2004. Ex.P3, Ex.P4 and Ex.P5 refer to the petitioner as the Area Operator and it also refers the petitioner as Area Technician. Therefore in the opinion of this court that the petitioner has worked under the respondent management even after completion of his training period. The contention of the respondent is that the petitioner was employed under one M/s. Abirami Services Private Limited who was inturn the contractor of the respondent company. The respondent in order to substantiate its claim has produced Ex.R2 and Ex.R3 long after the examination of RW1 before this court. Ex.R2 is letter issued by one M/s. Abirami Services Private Limited to the Personnel Officer of the respondent company seeking for issuance of Form-5. Ex.R3 is also another requisition by the same contractor for the year 2006. If really the respondent management has appointed M/s. Abirami Services Private Limited as its contractor, before appointment of such contractor the respondent company was legally bound to get permission from the concerned department for taking the said contractor as the contractor of the company for employment of the workers. The respondent has not chosen to produce any such order permitting the respondent company for engaging labourers on contract through a contractor. RW1 during his cross-examination before this court has categorically admitted that he has not produced any such order obtained from the Labour Department. He has also gone to the extent of saying that for every year they used to renew such permission. The non-production of such vital document calls for drawing adverse inference as against the respondent management by this court. Further the respondent management ought to have maintained attendance and other records for having kept the petitioner as the contract labourer through one M/s. Abirami Services Private Limited. The failure to produce such documents was not explained by the respondent management. Even the perusal of Ex.P10 to Ex.P14 clearly show that the Deputy Manager, Production by name one C. Karunanithi was the Supervisor for the petitioner herein. Further the petitioner has proved that he has completed 240 days in a calendar year before he was retrenched by the respondent company. In view of the above discussion, this court is of opinion that the petitioner has been retrenched from the services without any reason or rhyme. If really the petitioner had committed any mistake in his work, the management ought to have taken action against him by way of an enquiry. In the absence of any such records, the respondent terminate the services of the petitioner without following the principles enshrined under the labour enactments.

8. The learned counsel for the respondent has cited a case law in "*Uttar Pradesh Rajya Vidyudh Parishad Apprentice Welfare Association - 2000 LLR 869 SC*"

wherein the Hon'ble Apex Court has decided that if the appointment is not made through examination or interview before regular appointment the apprentice cannot claim any regular employment as a matter of right and the same view has been reiterated in the "*Hindustan Aeronautics Ltd, vs. Dan Bhadur Singh and Others - 2007 LLR 1229 SC*". Though the petitioner admittedly has not produced any documents to show that he has been employed by the respondent on regular basis after the completion of the apprenticeship he has been permitted to work directly under the surveillance and control of the respondent management. As such, the contention that the petitioner was not employed by the respondent management does not hold water as the burden has been shifted to it to prove otherwise.

9. In view of the above discussion, this point is answered to the effect that the petitioner is entitled for reinstatement. With regard to the claim of backwages the petitioner cannot claim it as he has not contributed any services and the backwages cannot be automatic. Therefore the petitioner is entitled for reinstatement with continuity of service without any backwages or any other detrimental benefits.

10. In view of the above discussion, this point is answered to the effect that the petitioner is entitled for reinstatement with continuity of service from the date of this order without any backwages or any other pecuniary benefits.

11. In the result, the petition is allowed and the petitioner is entitled for reinstatement from the date of this order without any backwages or any other pecuniary benefits.

Dictated to the Stenographer, transcribed by him, corrected and pronounced by me in the open court on this the 17th day of December 2010.

**R. MARGARET ROSALINE,**  
Presiding Officer, Labour Court.  
Karaikal.

*Petitioner's witnesses:*

PW1 — Sivakumar

*Respondent's witnesses :*

RW1 — Sivakumar

*Petitioner's exhibits :*

Ex.P1	7-9-2001	Service certificate of the petitioner
Ex.P2	7-9-2001	Office Order
Ex.P3	—	Maintenance requisition
Ex.P4	19-7-2004	Nozzle area log of respondent company.
Ex.P5	1-10-2003	Vessel entry and box up permit of respondent company.

Ex.P6	29-9-2003	Vessel entry and box up permit of respondent company.
Ex.P7	7-2-2004	Vessel entry and box up permit of respondent company.
Ex.P8	14-2-2004	Safety permit Class I -Enzyme system of the respondent company.
Ex.P9	1-3-2004	Safety permit Class I -Enzyme system of the respondent company.
Ex.P10	9-9-2003	Safety permit Class I-Enzyme system of the respondent company.
Ex.P11	26-7-2003	Safety permit Class I-Enzyme system of the respondent company.
Ex.P12	26-7-2004	Safety permit Class I -Enzyme system of the respondent company.
Ex.P13	9-8-2004	Safety permit Class I -Enzyme system of the respondent company.
Ex.P14	16-8-2004	Safety permit Class I -Enzyme system of the respondent company.
Ex.P15	3-11-2004	Xerox copy of the letter addressed by the petitioner to the Labour Welfare Officer, Karaikal.

*Respondent's exhibits :*

Ex.R1	12-8-2009	Authorisation letter of the respondent company
Ex.R2	13-6-2005	Letter addressed by the respondent company to Abhiraami Services (P) Limited.
Ex.R3	15-6-2006	Letter addressed by Abhiraami Services (P) Limited, to the respondent company.

**R. MARGARET ROSALINE,**  
Presiding Officer, Labour Court.  
Karaikal.

**GOVERNMENT OF PUDUCHERRY**  
**FINANCE DEPARTMENT**

(G.O. Ms. No. 28/F2/2011, dated 10th May 2011)

**NOTIFICATION**

Whereas the Ministry of Finance, Department of Revenue, Government of India have framed the National e-Government Plan (NeGP) and the Commercial Taxes Mission Mode Program (hereinafter referred to as the